SUPPLEMENTAL BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 22-CM-580

BRITTANY CARRINGTON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Cr. No. 2021-CMD-002149

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ISSUES PRESENTED

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II. Whether the government established appellant's guilt of attempted possession of a prohibited weapon where the trial court credited testimony that appellant used an umbrella to damage the windshield of the victim's car and then to strike the victim about the head and body while the victim was on the ground.

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COUNTERSTATEMENT OF THE CASE

On April 21, 2021, appellant Brittany Carrington was charged by information with two counts of simple assault (one count against Brooklin Brown and one count against Marylynn Jones) (D.C. Code § 22-404), one count of destruction of property (a car windshield) (D.C. Code § 22-303), and one count of attempted possession of a prohibited weapon

(an umbrella) (D.C. Code §§ 22-4514(b), 1803) (R. 1).[1] On July 28, 2022, the government filed an amended information that removed the count of simple assault against Ms. Brown (R. 10). After a two-day bench trial, the Honorable Robert I. Richter found Ms. Carrington guilty of the three remaining charges (8/2/22 Tr. 28). On August 2, 2022, the trial court sentenced Ms. Carrington to 40 days of incarceration with execution suspended as to each count of conviction, to run concurrently, and placed Ms. Carrington on one year of unsupervised probation (R. 16). Ms. Carrington filed a timely notice of appeal the following day (R. 17).

After Ms. Carrington filed an opening brief, the government filed a motion for summary affirmance. Ms. Carrington then submitted a reply brief, which this Court construed as an opposition to the government's motion. In a May 30, 2023, order, this Court denied the government's motion for summary affirmance, vacated the appointment of counsel, and appointed the Public Defender Service to represent Carrington and to file a supplemental or substitute brief addressing "whether there was sufficient evidence to support appellant's conviction for attempted

[1]"R." refers to the record on appeal. "Tr." refers to the court transcripts.

possession of a prohibited weapon where the object used was an umbrella" in addition to "any other issues identified." Carrington filed her supplemental brief on September 25, 2023.

The Trial

The Government's Evidence

A minor traffic accident precipitated the assault, destruction of property, and attempted possession of a prohibited weapon by appellant Brittany Carrington. On November 9, 2020, Brooklin Brown was driving her Jeep out of a Safeway parking lot along with her then fiancée, now wife, Marylyn Jones (8/1/22 Tr. 18, 76). As she attempted to turn left out of the lot, she was sideswiped by a sedan driven by Ms. Carrington (*id*. at 18, 25, 77-78).[2] Both vehicles pulled over (*id*. at 18).

Ms. Brown and Ms. Jones got out of their Jeep to exchange insurance information with Ms. Carrington and determine if there were any witnesses who had observed the accident (8/1/22 Tr. 18, 24, 78). Ms.

[2] Although neither Ms. Brown nor Ms. Jones made an in-court identification of Ms. Carrington as the driver of the other vehicle, they repeatedly described the driver as the attacker, and Ms. Carrington identified herself as being the driver both to the responding officer on body-worn camera footage admitted into evidence and also in her own testimony (8/1/22 Tr. 111-114, 137).

Carrington's car was occupied by four people at the time: herself; her 17-year-old daughter; and two additional passengers (*id.*). All four occupants of Ms. Carrington's car exited the car and began confronting Ms. Brown and Ms. Jones (*id.* at 18, 24-25, 78-79). Ms. Brown called the police, and Ms. Jones tried to take a picture of Carrington's license plate (*id.* at 78). At this point, Ms. Carrington and the three others with her began to get aggressive (*id.* at 19). People started screaming and yelling at each other, and Ms. Carrington and some of those with her started attacking first Ms. Jones and then Ms. Brown (*id.*).[3] A brawl ensued (*id.* at 27-31, 82-83).

At some point, the fighting stopped, the parties separated from each other, and Ms. Brown spoke with the police on the phone again (8/1/22 Tr. 20, 32, 82-83).[4] While Ms. Brown was still on the phone with the police, Ms. Carrington retrieved a "long" object that "resembled a bat," which was later identified as an umbrella (*id.* at 20, 34-35, 83). She

[3] Ms. Brown and Ms. Jones believed that multiple women were involved in the attack, but neither was able to identify which of the four women attacked them at this point (8/1/22 Tr. at 27-29, 43, 82, 88-89).

[4] The government introduced recordings of all three calls that Ms. Brown made to 911 (Government Exhibit (Gov. Exs.) 1, 2, and 3) (8/1/22 Tr. 30-33, 36-37). We are moving to supplement the record with those exhibits.

"charged towards [Ms. Brown's] car" with the object and preceded to "bash" the windshield with the object, using both hands to swing the object from above her head "at a rapid pace downward." (*Id*. at 20, 34-35.) She struck the windshield multiple times and caused significant damage, including cracking and partially caving in the windshield (*id*. at 20, 33-35, 83, 118).[5]

When Ms. Jones attempted to stop Ms. Carrington from doing further damage to the windshield, Ms. Carrington "beg[an] to use the [object]" on Ms. Jones by "hit[ting] her" with it (8/1/22 Tr. 20, 35, 83-84). After Ms. Jones fell to the ground, Ms. Carrington struck her in the back of the head and on the back with the umbrella (*id.* at 103). Ms. Carrington struck Ms. Jones "at least three to four times" with the umbrella (*id.* at 85). Ms. Jones was injured on the side of her face, had some bruises on her elbow, and suffered from soreness in her neck and back (*id*. at 20-21,

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[5] Approximately two minutes into the call, there was a sound that Brown identified as the noise of her car window being smashing (8/1/22 Tr. 34). This suggests that the break in the fight was at least two minutes long.

The government introduced two photographs (Gov. Exs. 5A and 5B), showing the damage to the windshield (8/1/22 Tr. 39-40). Copies are included in Ms. Carrington's supplemental appendix, filed September 25, 2023.

85, 89-90). She later went to the hospital, where she received a CAT scan (*id.*).

After Ms. Brown called the police again, several officers arrived, including Officer John D'Angelo (8/1/22 Tr. 36-37, 43, 110-11; Gov. Ex. 3). Officer D'Angelo arrested Ms. Carrington (*id.* at 110-11). He also recovered the main part of the umbrella from Ms. Carrington's car and additional pieces of the umbrella along the road (*id.* at 110-12). On scene, Officer D'Angelo asked Ms. Carrington, "How does the umbrella come into play?," and Ms. Carrington responded, "Because her girlfriend was jumping in it, so I get my umbrella out of the car and I'm breaking it up and boom." (Gov. Ex. 7 at 19:31:41-19:32:01; 8/1/22 Tr. 117, 124.)[6] Ms. Carrington did not admit that she used the umbrella to break the car window and claimed she did not know how the window got damaged or

[6] A copy of Officer D'Angelo's body-worn camera footage from the incident was introduced into evidence as Gov. Ex. 7 (8/1/22 Tr. 112-14); we previously moved to supplement the record with that exhibit on April 5, 2023.

how the umbrella ended up in her car where it was found (8/1/22 Tr. 124-25).[7]

The Defense Evidence

Ms. Carrington testified that, on November 9, 2020, she was in her car and turning left when she "must have kind of sideswiped someone's car" (8/1/22 Tr. 137). Ms. Carrington stopped her car, and she and her 17-year-old daughter got out (*id*. at 138). Ms. Carrington's daughter told her that one of the women in the other vehicle was taking a picture of her car (*id*. at 138-39). Ms. Carrington testified that when her daughter tried to take a photo of the women's car in response, Ms. Jones hit her daughter (*id*. at 139-40). Ms. Carrington hit Ms. Jones back, and a fight ensued (*id*. at 139-140).

Ms. Carrington acknowledged that at some point there was a break in the fighting, and she "had a chance to break away, go get in the car"

[7] Ms. Brown and Ms. Jones saw only Ms. Carrington holding the umbrella that day (8/1/22 Tr. 38, 42, 87). Ms. Jones could not definitively say who hit her or the car windshield, but Ms. Brown identified the assailant as "the driver" of the other car (*id*. at 20-21, 33-35, 43, 84, 88-89, 104). Ms. Carrington acknowledged that she was the driver of the other car to officers who responded to the scene of the offense and also in her testimony at trial (8/1/22 Tr. 111-114, 137).

(8/1/22 Tr. 140, 146). According to Ms. Carrington, Ms. Jones came over to Ms. Carrington and attacked her again, which caused Ms. Carrington's daughter to fight back against Ms. Jones (*id.* at 140-41).

Once Ms. Carrington saw Ms. Jones fighting her daughter, Ms. Carrington was "just like over it" (8/1/22 Tr. 141). She stated that "[t]his is where the umbrella comes into play" (*id.*). Although Ms. Carrington admitted that she got the umbrella out of the car and went "to swing" it, she testified that someone took the umbrella out of her hands (*id.* at 141). She claimed to not know what happened to the umbrella or the windshield because she "start[ed] fighting again" (*id.*). When asked specifically why she retrieved the umbrella from her car, she said she "was trying to get everybody's attention," and again acknowledged that she was "going to, you know, go swing it" before it was taken out of her hands (*id.* at 141-42). She denied hitting the windshield or Ms. Jones with the umbrella and denied putting the umbrella back in her car, where it was ultimately found (*id.* at 141-42, 150).

The Trial Court's Findings and Verdict

Judge Richter convicted Ms. Carrington of all three charges: destruction of property, simple assault, and attempted possession of a

prohibited weapon. He found that there was "absolutely no question" that someone from Ms. Carrington's car used the umbrella to break the windshield and "hit Ms. Jones with [the umbrella] when Ms. Jones tried to restrain that person" (8/2/22 Tr. 26). Therefore, he determined that there was "really only one issue" – namely, who was holding the umbrella (*id.*).

Judge Richter credited the testimony of Ms. Brown and "found [Ms. Jones] to be a credible witness" (8/2/22 Tr. 26). He noted that Ms. Brown said she saw the driver of Ms. Carrington's car go into the car, get the umbrella, break the windshield, and hit Ms. Jones and that "we know for a certainty" that the driver was Ms. Carrington because "she herself admitted to it" (*id.*).

Ms. Carrington's own testimony established that she retrieved the umbrella from the car and swung it around to try to "scare people" (8/2/22 Tr. 26). Indeed, the trial court found that this testimony "belie[d] [defense counsel's] argument that [Ms. Carrington] was in no physical condition to swing the umbrella" (*id.*). Judge Richter also found that Ms. Carrington's testimony that someone else grabbed the umbrella from her "just doesn't really make sense" and "does not in any way undercut Ms.

Brown's identification" of the person with the umbrella as being the driver, i.e., Ms. Carrington (*id.* at 26-27). Judge Richter thus had no reasonable doubt "that it was Ms. Carrington who did those things" (*id.* at 27).[8]

Judge Richter also found that Ms. Carrington did not act in self-defense or defense of others. He stated that "clearly the breaking of the windshield ha[d] no justification or mitigation. It was simply done out of anger for what was going on there." (8/2/22 Tr. 27.) Moreover, "to the extent that she began hitting Ms. Jones when Ms. Jones was trying to restrain her, [Ms. Carrington did] not have the right of self-defense at that point since Ms. Jones was clearly justified in trying to restrain her" (*id.*). Judge Richter reiterated that Ms. Carrington "did not have a self-defense claim to hitting Ms. Jones with the umbrella and obviously [Ms. Jones] was seriously or significantly injured" (*id.*).

Lastly, Judge Richter found that Ms. Carrington used the umbrella as a weapon without sufficient justification when she broke the

[8] Although Judge Richter found Ms. Jones credible, he did not rely on her testimony as to identification, because she "d[id]n't know who hit her" (8/2/22 Tr. 26).

windshield with it and then hit Ms. Jones with it (8/2/22 Tr. 28). Accordingly, he found Ms. Carrington guilty of all three charges (*id.*).

SUMMARY OF ARGUMENT

The evidence before the trial court was sufficient to support the challenged convictions for simple assault and attempted possession of a prohibited weapon.

The government produced credible testimony that Ms. Carrington was irate about a fight involving her daughter and Ms. Jones. She grabbed an umbrella from her vehicle and used it to damage the windshield of Ms. Brown's car. She then hit Ms. Jones with the umbrella at least three to four times—including hitting Ms. Jones in the back of the head while Ms. Jones was already on the ground.

A reasonable factfinder could infer from the surrounding circumstances, including the repeated nature of the strikes with the umbrella, and the fact that Ms. Jones was on the ground when struck, that Ms. Carrington intentionally wielded the umbrella to assault Ms. Jones.

A reasonable fact finder could also conclude that Ms. Carrington used the umbrella as a dangerous weapon. She wielded the umbrella with

sufficient force to break a car windshield and she repeatedly struck Ms. Jones in the head and body while Ms. Jones was on the ground, thereby creating the requisite risk of unconsciousness or other serious bodily injury.

ARGUMENT

The Evidence was Sufficient to Support the Convictions.

Appellant challenges the sufficiency of the evidence supporting her simple assault and attempted PPW(b) convictions.[9] Specifically, appellant claims that the government failed to prove her intent to strike Ms. Jones with the umbrella as required to support both of these convictions (Appellant's Brief (App. Br.) at 14-21). Appellant further contends that the government failed to show that the umbrella was a dangerous weapon as needed to sustain the attempted PPW(b) conviction (App. Br. at 22-29). Appellant's claims fail.

[9] Appellant's Supplemental Brief does not challenge the destruction of property conviction, other than to incorporate defense counsel's challenge to the identification evidence in the initial brief (Appellant's Brief at 12).

A. Standard of Review and Applicable Legal Principles

This Court reviews sufficiency challenges de novo, *Hughes v. United States*, 150 A.3d 289, 305 (D.C. 2016). In doing so, it must examine the record in the light most favorable to the government, draw all reasonable inferences in the government's favor, and defer "to the right of the judge, as the trier of fact, to determine credibility and weigh the evidence." *Bolden v. United States*, 835 A.2d 532, 534 (D.C. 2003). This Court may reverse only if there is "no evidence upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt." *Id.*; *see also Hughes*, 150 A.3d at 305. Moreover, "[t]his Court has often and consistently held that the testimony of a single witness is sufficient to sustain a criminal conviction, even when other witnesses may testify to the contrary." *Gibson v. United States*, 792 A.2d 1059, 1066 (D.C. 2002). The factfinder is always permitted to accept parts of witness's testimony and reject other parts. *Koonce v. United States*, 993 A.2d 544, 551 (D.C. 2010).

In reviewing a bench trial, this Court will not reverse a conviction for insufficient evidence "unless appellant establishes that the trial court's factual findings were plainly wrong or without evidence to support them." *Joiner-Die v. United States*, 899 A.2d 762, 764 (D.C. 2006)

(cleaned up). In particular, factual findings "anchored in credibility assessments derived from personal observations of the witnesses" are beyond appellate reversal unless those findings are clearly erroneous. *Stroman v. United States*, 878 A.2d 1241, 1244 (D.C. 2005) (citations omitted). In other words, credibility determinations are "virtually unreviewable," *Walker v. United States*, 167 A.3d 1191, 1210 (D.C. 2017) (citation omitted), unless the witness is "inherently incredible under the circumstances." *Slater-El v. United States*, 142 A.3d 530, 538-39 (D.C. 2016). Inherent incredibility "is a very stringent test which has been met in only a tiny number of cases." *In re A.H.B.*, 491 A.2d 490, 496 n.8 (D.C. 1985).

To support a simple assault conviction, the government must prove, beyond a reasonable doubt, that there was "(1) an act on the part of the defendant; (2) the apparent present ability to injure the victim at the time the act is committed; and (3) the intent to perform the act which constitutes the assault at the time the defendant commits the act." *Vines v. United States*, 70 A.3d 1170, 1179 (D.C. 2013). *Accord Perez Hernandez v. United States*, 286 A.3d 990, 1003 n.20 (D.C. 2022) (en banc) (endorsing *Vines* analysis of attempted-battery assault).

To support a conviction of possession of a prohibited weapon, the government must prove "that the defendant possessed [a dangerous weapon] with the specific intent to use it unlawfully." *Stroman v. United States*, 878 A.2d 1241, 1245 (D.C. 2005). There are two categories of "dangerous weapons" under D.C. Code § 22-4514(b). First, there are objects that constitute dangerous weapons per se. These are weapons specifically mentioned in the statute: "an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches." D.C. Code § 22-4514(b); *see Stroman*, 878 A.2d at 1245.

The second category involves "other" dangerous weapons not specifically identified in the statute. "[A]n ordinary household object may be a dangerous weapon if it is known to be likely to produce death or great bodily injury in the manner in which it is used, intended to be used, or threatened to be used." *Leander v. United States*, 65 A.3d 672, 675 (D.C. 2013) (quotation marks omitted). "This [C]ourt has interpreted the term 'great bodily injury' to be equivalent to the term 'serious bodily injury,' which describes bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protected and obvious disfigurement, or protected loss or impairment of the function of a bodily

member, organ, or mental facility." *In re D.T.*, 977 A.2d 346, 356 (D.C. 2009) (quotations and citations omitted); *see also Beaner v. United States*, 845 A.2d 525, 538 (D.C. 2004) (proof of unconsciousness sufficient to establish serious bodily injury). "Whether something is a dangerous weapon, *i.e.*, whether it is likely, as used, to produce the requisite injury, 'is ordinarily a question of fact to be determined by all the circumstances surrounding the assault,' and the analysis may be based on 'familiar and common experience.'" *Alfaro v. United States*, 859 A.2d 149, 160 (D.C. 2004) (*quoting Williamson v. United States*, 445 A.2d 975, 979 (D.C. 1982)).

B. The Government's Evidence Was Sufficient to Convict Ms. Carrington of Simple Assault.

Viewing the evidence in the light most favorable to the government, the evidence was more than sufficient to demonstrate that Ms. Carrington unlawfully assaulted Ms. Jones. The evidence showed that, after a break in an initial altercation, Ms. Carrington went to the car that she had been driving and retrieved an umbrella. She then used that umbrella to damage Ms. Brown's vehicle's windshield and then to strike

Ms. Jones multiple times, including while she was on the ground (8/1/22 Tr. 20, 35-36, 43, 83-85).

Specifically, Ms. Brown, whose testimony the judge credited, testified that she observed the driver of the car reach into that car and remove a long object that resembled a bat (8/1/22 Tr. at 20, 33-34). Ms. Brown testified that this woman then ran towards her vehicle with the object (which turned out to be an umbrella) and, after hitting and damaging the windshield with it, the woman then "beg[an] to use the [object] on Ms. Jones" who was trying to intercede and "proceeded to hit [Ms. Jones] with the object" (*id.* at 20, 35).

Ms. Jones, whom the court also found credible, provided further information about the assaultive conduct. She testified that, after trying to intercede, she was hit at least three to four times with the umbrella (8/1/22 Tr. 85). She was hit in the back of the head and on the back with the umbrella while she was on the ground after falling in the struggle (*id.* at 103). She testified that she was injured on the side of her face, had some bruises on her elbow, suffered from soreness and pain in her neck and back, and was transported to the hospital in an ambulance (*id.* at 85, 89-90).

Taken together with Ms. Carrington's admissions that she was the driver of the vehicle that hit Ms. Brown's car and the person who retrieved the umbrella (8/1/22 Tr. 117, 137), a reasonable factfinder could find that Ms. Carrington (1) hit Ms. Jones with the umbrella; (2) intended to do so; and (3) did so with the actual and apparent ability to injure Ms. Jones. *See Vines*, 70 A.3d at 1179.

There is no merit to Ms. Carrington's assertion (at 14-19) that the government did not prove that she had the requisite intent to assault Ms. Jones because the trial court did not resolve the possibility that she may have struck Ms. Jones with the umbrella accidentally.[10] This argument selectively ignores the evidence at trial and the significant deference due to the fact finder's credibility determinations on appeal. Contrary to Ms. Carrington's characterization, the witnesses at trial did not solely speak about the use of the umbrella passively. Rather, Ms. Brown testified that, after hitting the windshield, Ms. Carrington "begins to use the [umbrella] on" Ms. Jones (8/1/22 Tr. at 20) and "proceeded to hit [her] with the

[10] Ms. Carrington did not raise this argument, or a general claim of accident, below. Indeed, Ms. Carrington denied wielding the umbrella to injure Ms. Jones or damage the windshield (8/1/22 Tr. 141-42, 150).

umbrella" (*id.* at 35). These phrases, "begins to use on" and "proceeded to hit with," evince clear intentionality on the part of Ms. Carrington. Judge Richter credited the testimony of Ms. Brown, a determination which, in this circumstance, is entitled to great deference to the point of being "virtually unreviewable." *Walker v. United States*, 167 A.3d 1191, 1210 (D.C. 2017). Based on the description in this testimony alone, which Judge Richter deemed credible, he could reasonably infer that Ms. Carrington intended to use the umbrella against Ms. Jones and did not strike her accidentally.

Ms. Jones's testimony regarding the manner in which she was struck with the umbrella provides further evidence of this intentionality. *See generally Sousa v. United States*, 400 A.2d 1036, 1044 (D.C. 1979) (recognizing the importance of the "conduct and the attending circumstances" in determining intent for assault). Ms. Jones was not struck only while she was standing near the windshield in an attempt to stop further damage, as would be expected if it were accidental. Instead, Ms. Carrington struck Ms. Jones in the back of the head and back while Ms. Jones was on the ground, thereby evincing a clear intent to make forcible contact with the victim *(*8/1/22 Tr. at 103). Moreover, Ms. Jones

credibly testified that she was struck "at least three to four times" with the umbrella, again suggesting an intentional rather than accidental event (8/1/22 Tr. 85).[11]

In any event, contrary to Ms. Carrington's suggestion (at 15), the government need not establish that Ms. Carrington intended to inflict bodily injury on Ms. Jones. Even under the defense view of the evidence, the government established Ms. Carrington's guilt. Ms. Carrington recklessly swung the umbrella with enough force to break a car windshield while Ms. Jones stood in close proximity, attempting to intervene. Such reckless conduct will suffice to prove simple assault. *See, e.g.*, *Vines*, 70 A.3d at 1180 (affirming simple-assault conviction where defendant "led police on a high-risk chase down a busy street in downtown" and collided with other vehicles; "a reasonable juror could have inferred the intent to cause bodily harm from his extremely reckless conduct, which was almost certain to cause bodily injury to another");

[11] Indeed, Ms. Carrington's own statements suggest intentionality. Although she denied ultimately hitting anyone or the car with the umbrella, she acknowledged that she was getting the umbrella out of the car because she was upset about the fight between Ms. Brown and her daughter and said that she was "going to, you know, go swing it" (*id*. at 141-42).

Ruffin v. United States, 642 A.2d 1288, 1296 (D.C. 1994) ("the intentional firing of multiple shots into the confined space of a small passenger vehicle could sustain an assault charge on each occupant of the car, even if the assailant did not have actual knowledge that such passengers were present") (emphasis in original); *Powell v. United States*, 485 A.2d 596, 597 (D.C. 1984) (affirming ADW conviction where defendant's vehicle was "likely to produce death or serious bodily injury because of the wanton and reckless manner of its use in disregard of the lives and safety of others").

C. The Government's Evidence Was Sufficient to Convict Ms. Carrington of Attempted PPW(b).

Ms. Carrington challenges her conviction for attempted PPW(b) on two grounds: (1) that the government did not present sufficient evidence that the weapon (an umbrella) was intentionally used "unlawfully" against another; and (2) that the umbrella was not a "dangerous weapon" as used. Both claims are meritless.

Although a PPW(b) charge "does not require evidence of an attempt to do harm," *In re M.L.*, 24 A.3d 63, 71 (D.C. 2011) (citation omitted), the government established that Ms. Carrington intentionally used the

umbrella to strike Ms. Brown multiple times. Where, as here, the defendant has used the weapon to commit an assault, the government has necessarily established the weapon's use in an unlawful manner. *See,* e.g., *Johnson v. United States*, 207 A.3d 606, 613 (D.C. 2019) (given conviction for second-degree cruelty to children, "there was sufficient evidence that appellant had intent to use the wooden stick unlawfully"); *Leander,* 65 A.3d at 675 (sufficient evidence to establish PPW(b) where defendant used gravy pot to assault his brother).[12]

[12] Ms. Carrington argues that the government must prove an intent to use the dangerous weapon against another's person, and that using a dangerous weapon to injure another's property would not suffice for conviction (App. Br. at 19-22). This Court need not reach this issue given Ms. Carrington's conviction for assaulting the person of Ms. Jones. However, we would note that the Council has embraced the concept of "weapons" being used against property. *See* D.C. Code § 22-3154(a) ("A person who manufactures or possesses a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, *or massive destruction of property* may, upon conviction, be punished by imprisonment for life.") (emphasis added). In other states, courts have interpreted similar weapons provisions to cover the unlawful use of a dangerous weapon against property. *Cf. State ex rel. G.C.*, 846 A.2d 1222, 1226 (N.J. 2004) (although N.J. Stat. Ann. § 2C:39–1r defines "weapon" as "anything readily capable of lethal use or of inflicting serious bodily injury," firing a paintball gun at an unoccupied vehicle constitutes fourth-degree unlawful possession of a weapon; the court construes "'harm to others' more broadly to include damage to a person's property").

The government likewise met its burden to show that the umbrella was a "dangerous weapon" under the PPW(b) statute because of the manner in which it was used in this assault. Contrary to the implication of Ms. Carrington's argument (at 23-24, 28-30), the government is not required to prove that Ms. Carrington actually *caused* great bodily injury, or any injury at all, with the umbrella. *See e.g.*, *Savage-El v. United States*, 902 A.2d 120, 125 (D.C. 2006) (finding that, even though the weapon was never used and never caused any actual injuries, "the gasoline bottle being carried by appellant was likely to produce death or great bodily injury"). Although the actual injury inflicted can be one factor in assessing the sufficiency of the evidence, *see*, *e.g., Stroman*, 878 A.2d at 1245, it is not a necessary predicate. Rather, to prove something is a dangerous weapon, the government need only show that "great bodily injury" is "likely" to be caused by the umbrella in the manner in which it was used or threatened to be used. *Id.*[13] "The fact that the government did not introduce expert testimony concerning the seriousness of injuries

[13] And, although the Court need not reach the issue, the Court may also consider the likelihood that the dangerous weapon would cause significant property damage.

that such a weapon could inflict does not preclude a jury from reasonably concluding that the weapon was 'dangerous.'" *Williamson v. United States*, 445 A.2d 975, 980 (D.C. 1982). "The dangerous nature and use of the object can be evaluated on the basis of the 'familiar and common experience'" of the factfinder. *Id*. Ms. Carrington asserts that "it is not at all clear that an ordinary umbrella, when used to strike someone, could ever qualify as a dangerous weapon" (App. Br. at 24). Courts have concluded otherwise. *See, e.g., Smith v. State*, 322 S.E.2d 492, 494 (Ga. 1984) ("the umbrella itself was introduced to show additionally that it could have made several of the abrasions on the victim's body, hence was a weapon or instrumentality of the crime"); *People v. Dones*, 720 N.Y.S.2d 101, 102 (N.Y. App. Div. 2001) ("Defendant was properly convicted of attempted assault in the second degree in that the evidence warranted the conclusion that defendant used an umbrella in a manner that rendered it a dangerous instrument."); *State v. Andrews*, 665 So. 2d 454, 456 (La. Ct. App. 1995) ("both perpetrators used weapons to inflict great bodily harm on the victim," where one defendant smashed the victim's

face with a beer bottle and another defendant "stabbed at him with an umbrella which pierced the victim's arm").[14]

Indeed, this Court has repeatedly found that ordinary household objects can function as prohibited weapons, even where their use, did not, in fact result in great bodily injury to the victim. Among the items this Court has held qualify as "dangerous weapons" are: a belt with a metal buckle used to hit a police officer, causing bruising and a welt, *Rivera v. United States*, 941 A.2d 434, 441 (D.C. 2008); human teeth, "leaving teeth marks and a bleeding wound," *In re D.T.*, 977 A.2d at 350; a wooden table leg two-inches thick and two-and-one-half feet long thrown at (but missing) a mailman, *United States v. Brooks*, 330 A.2d 245, 247 (D.C. 1974); a chair leg used to hit a victim, *Harper v. United States*, 811 A.2d 808, 810 (D.C. 2002) (citing *Jones v. United States*, 401 A.2d 473, 476

[14] Contrary to Ms. Carrington's claims (at 25), the district court in *United States v. (Aldo) Jones*, 492 F. Supp. 3d 1200, 1247-54 (D.N.M. 2020), did not "reject[ ] out of hand" the notion that an umbrella could qualify as a dangerous weapon. Instead, the court rejected the defendant's self-defense claims on the particular facts of that case. "At the moment that A. Jones stabbed Chavez, Chavez held an umbrella in his hand, but Chavez had not used the umbrella to physically attack A. Jones. Although Chavez could have injured A. Jones' eye with the umbrella, it was not reasonable for A. Jones to charge toward Chavez and stab him in the chest." *Id.* at 1253 (internal record citations omitted).

(D.C. 1979)); and an umbrella with a metal attachment used to threaten but not to strike a victim, *Williamson*, 445 A.2d at 979-80.

The way the umbrella was used by Ms. Carrington in her assault of Ms. Jones satisfies the standard. Ms. Jones testified that the assailant struck her "at least three to four times" with the umbrella, including in the back of the head and back while she was on the ground (Tr. 8/1/2022 at 85, 103). Ms. Brown described the umbrella as "long" and "bat-like" and pictures were introduced in evidence showing its length and composition (*id.* at 20). While Ms. Carrington's assault ultimately caused only bruising, there was substantial risk of far greater injuries under the circumstances.

Specifically, Ms. Jones was on the ground in an incredibly vulnerable position when she was struck in the back of the head with a long, hard object by an irate person who had just smashed her windshield with repeated blows. Under these circumstances, a fact finder, considering the circumstances of the assault and their own "familiar and common experience" with anatomy, could conclude that these repeated strikes to Ms. Jones's head and body were likely to cause great bodily

injury, including a substantial possibility of injury to her eyes, a concussion, or unconsciousness.

Ms. Carrington's use of the umbrella as a dangerous weapon here posed the same risk of serious bodily injury as in other cases decided by this Court. For example, in *Rivera,* this Court took care to note that the defendant's forceful use of the belt, which only left a bruise and an imprint on the officer's arm, nonetheless "created a substantial risk that the officer's arm would be impaired seriously, or that there would be a protracted loss of the function of the arm." 941 A.2d at 441. Similarly, in *Johnson v. United States*, 207 A.3d 606, 613 (D.C. 2019), this Court held that the defendant used a wooden broomstick as a dangerous weapon where she "struck A.J. indiscriminately without taking any precaution to avoid striking parts of A.J.'s body that would cause serious injury, such as his head or face"; "even though A.J. blocked his face with his left arm, he sustained a mark on his left ear, in addition to having marks and bruises on his arms, shoulder, and legs."

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

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A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
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(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

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22-CM-580
Case Number(s)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Fleming Terrell, Esq., fterrell@pdsdc.org, on this 22nd day of November, 2023.

/s/
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